

**COMTRAK**

201 Evans Lane  
St. Louis, MO 63121-1126  
314 553 4170  
314 553 4279 Fax

**EX PARTE OR LATE FILED**

March 5, 1997

**RECEIVED****MAR 5 - 1997***Federal Communications Commission  
Office of Secretary*

The Honorable Rachelle B. Chong  
Commissioner  
Federal Communications Commission  
1919 M. Street, NW  
Washington, D.C. 20553

RE: Amendment of Part 90 of the Commission's Rules to Adopt Regulations for  
Automatic Vehicle Monitoring Systems (PR Docket No. 93-61)

Dear Commissioner Chong:

Comtrak respectfully submits this letter to inform the Federal Communications Commission (the "Commission") of the needs of individuals and companies that operate, or are interested in operating, multilateration location and monitoring service ("LMS") systems in the United States.

As an equipment manufacturer, Comtrak has been involved in location technology for more than twenty years, being a supplier of sophisticated radio frequency location systems to the U.S. government. In 1992, Comtrak expanded the deployment of its equipment from government to commercial purposes when it entered into a supply agreement with Southwestern Bell Mobile Systems ("SBMS"). Under this agreement, Comtrak was the equipment supplier for SBMS and helped construct an LMS system in Chicago. While SBMS has decided to terminate its LMS operations, Comtrak remains committed to continue the commercialization of its product in the United States. Comtrak equipment is also deployed in commercial LMS operations in Mexico City.

Comtrak has been involved in the Commission's LMS-related proceedings directly and indirectly since 1992. Comtrak's early participation in these proceedings was achieved through its input to the filings of SBMS and through joint meetings with the Commission's staff. In April of 1996, Comtrak began interacting with the Commission on LMS matters independently of SBMS. Representatives of Comtrak have since met with David Furth, Jay Jackson, Sandra Danner, Tom Dombrowsky, Mike Kemper, Jackie Chorney, Jane Halprin, and Kathleen Ham of the Wireless Telecommunications Bureau staff to demonstrate Comtrak's LMS technology and to become educated on the federal regulatory requirements governing LMS licensees. In addition, Comtrak has maintained regular contact with members of the Wireless Telecommunications Bureau staff to track the status of the Commission's response to petitions for reconsideration in the main LMS proceeding, the status of auctions for allocating

No. of Copies rec'd 3  
List ABCDE

spectrum for additional LMS licenses and the status of various waiver requests. As can be seen from the foregoing, Comtrak has been involved actively in the Commission's LMS proceedings.

Comtrak intends to be a national provider of LMS services, either individually or through a joint venture with a business partner. Comtrak, however, is encountering difficulties in achieving this goal due, in large part, to the actions of the Commission. In order for Comtrak to offer LMS, it must have the necessary spectrum, predictable federal rules and complete information regarding the identities and service offerings of other licensees in any of the markets in which Comtrak intends to operate. Unfortunately, there are several issues pending in the LMS docket that must be resolved by the Commission before Comtrak's needs can be met. To improve this situation, Comtrak requests respectfully that the Commission consider the suggestions outlined below as it moves forward with the LMS proceeding.

#### The Commission Must Expedite the Auctioning of Spectrum for LMS

It is imperative that the Commission auction immediately spectrum for LMS licenses. Comtrak would like to deploy LMS systems in strategic locations throughout the United States and must secure the proper number of LMS licenses in frequency bands that best suit Comtrak's technical system design in order to realize this goal. The only way Comtrak can secure all of the spectrum it requires is if the Commission reclaims spectrum underlying unbuilt systems and then auctions this and any other available spectrum to applicants committed to building and operating LMS systems.

When Congress gave the Commission authority to auction spectrum, it did so with the goal of serving the public interest by the rapid deployment of technology, the promotion of competition, the recovery for the public of the value of the spectrum and the efficient allocation of spectrum.<sup>1</sup> The public interest is not being served by the Commission in the LMS docket.

In the initial Report and Order released by the Commission in February 1995, the Commission stated that spectrum for multilateration LMS could be allocated using auctions.<sup>2</sup> Two years have passed since the Commission first stated that spectrum for LMS could be auctioned, and still no auctions have been held. In the meantime, businesses such as Comtrak have developed business plans, raised capital, hired employees and deployed manufacturing

---

<sup>1</sup> 47 U.S.C. § 309(j)(3)(1996).

<sup>2</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, FCC 95-41, Report and Order, PR Docket No 93-61, 10 FCC Rcd 4694, ¶ 54 (1995) (LMS Report and Order).

and service facilities only to have their plans frustrated by the lack of follow-through on the part of the Commission. Such delays by the Commission impede the deployment of technology and leave spectrum sitting idle or under-utilized. As a result, there is not ubiquitous availability of LMS-based services today in all areas of the country. In areas where LMS systems are deployed, there is usually only one service provider. The public, thus, does not derive the cost and service quality benefits driven by competition and consumer choice. In addition, the Commission has had an opportunity to generate revenue from LMS spectrum auctions, but has chosen to delay such auctions on several occasions without good reason. Finally, when the Commission fails to auction spectrum in a timely manner, it delays the ability of new businesses to enter the commercial telecommunications market while giving established telecommunications companies more time to become entrenched. Current LMS licensees have been able to build their systems without competition from new businesses. With each rule waiver the Wireless Telecommunications Bureau grants, the current licensee gains a greater foothold in its market. Comtrak supports the ability of current licensees to operate their LMS systems and the ability of consumers to take advantage of LMS-based applications, however, Comtrak is disturbed about its inability to enter the market due to the Commission's inaction and by the Commission's perpetuation of an unlevel playing field. Comtrak, therefore, urges the Commission to move forward immediately with LMS spectrum auctions so that the public interest may be finally served.

#### The Commission Should Issue Immediately a Memorandum Opinion and Order in the LMS Proceeding

There are Petitions for Reconsideration pending before the Commission in the LMS docket. Future growth in the LMS industry is limited by the lack of finality on these pending matters and the long delay in the Commission's response to the issues raised in the petitions. For example, Comtrak has found that current and potential licensees are hesitant about making all of the resource commitments necessary to provision a nationwide or regional LMS system because they are uncertain about matters such as how interference issues will be resolved or when they will be able to secure additional spectrum. The result is that LMS is available only in a limited number of markets and with little or no consumer choice as to service providers. In addition, until final rules are issued and spectrum is auctioned, the viability of LMS technology is jeopardized by the inability of interested parties to secure enough spectrum to create a system with the coverage or features necessary to recoup the significant investment required to implement an LMS system. Without final rules, potential investors also may choose to forego plans to offer LMS in exchange for offering services governed by more definitive and timely-issued regulations.

It is Comtrak's understanding that the Wireless Telecommunications Bureau staff has written the substance of the Memorandum Opinion and Order ("MO&O"), but that the proposed text has yet to be circulated or reviewed outside of the Wireless Telecommunications Bureau. It has been said that perhaps one cause of the delay in issuing the MO&O was the

need for the Wireless Telecommunications Bureau to develop auction rules for LMS. In light of the Commission's recent announcement that it will be releasing general auction rules, there appears to be no further reason for postponing the issuance of the MO&O.<sup>3</sup> Comtrak, therefore, urges the Commission to take a proactive role in facilitating the expedited review and release of the MO&O so that all interested parties have the benefit of final rules and so that auctions may soon follow.

#### The Wireless Telecommunications Bureau Should Compile a List of Grandfathered Licenses

Based on the information currently available at the Commission, it is difficult, if not impossible, for interested parties to identify current LMS licensees. When asked for a list of licensees, members of the Wireless Telecommunications Bureau staff stated that such a list has never been compiled because it would be a waste of resources to do so until the construction deadline had passed and all grandfathered licensees could be identified. In light of the Wireless Telecommunications Bureau's many other responsibilities, Comtrak is sympathetic to the need to optimize resources. Now that the construction deadline has passed, however, Comtrak asks the Commission to require that the Wireless Telecommunications Bureau generate immediately a list of grandfathered LMS licensees and notify Comtrak as to when such list will be available.

#### The Wireless Telecommunications Bureau Should Encourage the Submission of Service Area Maps

The current Part 90 rules governing LMS do not require licensees seeking grandfathered status to file service area maps that depict their systems built as of the construction deadline. Members of the Wireless Telecommunications Bureau's staff have stated that certain licensees intend to provide such maps voluntarily. Comtrak suggests that the Commission strongly encourage this practice for current licensees and also formally require such submission by all parties awarded licenses through the auction process. The filing of maps will allow all parties interested in participating in future auctions to gain a clear understanding of the areas in which LMS has yet to be offered and the resulting lack of uncertainty will increase the value of any spectrum to be auctioned. The maps are also useful for identifying and eliminating interference between licensees.

-o0o-

---

<sup>3</sup> Comtrak commends the Wireless Telecommunications Bureau staff for their efforts to respond in a timely and professional manner to the various matters raised by parties in the LMS docket. Comtrak and other businesses, however, require finality in the FCC's LMS rules and implementation of spectrum auctions and we believe that the Commission as a whole is not giving adequate attention or priority to fulfilling its responsibilities in these areas.

For the reasons stated above, Comtrak respectfully requests that the Commission elevate to its highest level of priority the resolution of the matters outstanding in the LMS docket and the implementation of auctions to allocate additional spectrum for LMS licenses.

Comtrak appreciates the opportunity to express its views to the Commission. Please do not hesitate to contact the undersigned if you have any questions. We look forward to receiving your response on these matters.

Very truly yours,

A handwritten signature in cursive script, reading "Bruce S. Kessler".

Bruce S. Kessler  
Director  
Comtrak